

Mr. J. Kevin O'Brien, chief
FOIPA Section
FBI
Washington, DC 20535

4/17/94

Dear Mr. O'Brien,

Please excuse my typing. It cannot be any better.

Your letter of April 14 misstates what I wrote you about on March 25. What you refer to as my request was not only "for material pertaining to Lee Harvey Oswald." It was for what the FBI had improperly withheld from me over the years and in all that litigation ^{none} ~~not one~~ of which was "pertaining to Lee Harvey Oswald." What I sought was JFK assassination information and information relating to the official investigations of it.

You next say that "The FBI files regarding this request are being transmitted to" NARA. With regard to your formulation, mine is not a new request. It is for compliance with the old requests. I ask for nothing new. You also imply that all your records are going to NARA. This is not only impossible, it would violate Section 2 (a)(1) which requires their preservation ^{for} "governmental purposes." The FBI's founding director, in sworn testimony to the Warren Commission, stated that the JFK assassination would forever be an open case for the FBI.

The new Act, as it says on the first page, is required because agencies like the FBI have not complied with ~~the~~ FOIA. (In (5))

Whether or not you realize it, and I presume that you are new or relatively new in your present responsibilities, your letter states forthrightly that the FBI is not complying with this new Act and does not intend to:

"The files transmitted to NARA are the same files we processed under FOIA prior to the Act."

My requests under FOIA quite a few of which the FBI forced me to take to court were rather inclusive in the JFK assassination information sought. In the course of those efforts, in court and in the appeals I was asked to file by the Department, I specified relevant information that was not exempt and remained withheld and what was withheld under unwarranted assertion of exemptions.

I also note that your language does not state that all relevant FBI records are transmitted to NARA. As for example, those of the FBI's field offices. *And others.*

You also suggest that the only way I can now obtain what the FBI withheld improperly from me is through NARA. Section 11 (d) says this is not so.

If you are not aware of it, my litigation was tainted by FBI departures from the truth, to the point where I considered it necessary to state what was material under oath myself to confront the FBI's false attestations. I made myself subject to prosecution if I swore falsely in stating that the FBI swore falsely to withhold relevant

records within the requests.

One example of this is repeated false swearing to withhold the Dallas and New Orleans office ticklers. The FBI swore that none are kept and it even swore falsely to what constitutes a tickler.

It happens that I learned something about FBI ticklers in my C.A. 75-1996, which was for King assassination records. I was able to identify several of these ticklers that existed and were withheld. I recall in particular what it referred to as the "Long" tickler. (SA Long was later an assistant director). I was able even to tell the FBI where that tickler was, physically, and it still denied having it. The appeals office then went where I said that tickler was and it was there- only extensively gutted and that long, long after my request.

Assuming you are not aware of these things I give you a ^{notion} of the FBI's deliberate dishonesty to withhold nonexempt and relevant information.

One item of that request was for all records relating to any form of surveillance on named persons, of whom I was one. *The FBI denied I had ever been surveilled.*

That Long tickler disclosed that I was surveilled on at ~~least~~ the phone by the FBI, which did that in violating the attorney general's refusal to grant it permission to wiretap any of the Ray family. The FBI then hid its prohibited telephone tapping on Jerry Ray, who phoned me, by filing it as a "bank robbery" case! And that was not gutted from the Long tickler when the appeals office found it where I said it was and the FBI said it wasn't.

I note parenthetically that the Church committee disclosed the FBI's interception of foreign mail to some countries. Some of my mail to my London agent was delayed reaching him until all that I had mailed the ^{that cost me publication of my book in England} previous two months reached him on one day. During that time a number of letters to me from a German publisher who wanted to publish my first book never reached me, nor did the manuscript when that publisher mailed it to me. These intrusions cost me publication in ^{at least} two countries. All of this is within my request for all information relating to me. And was not provided.

The Dallas and New Orleans ticklers that were withheld from me by what the FBI did not deny was perjury ought to be disclosed to me now under the provision of this new act. I cite this as an example of what is within my letter of the last month, the 25th.

An example of improper withholding, by improper use of the exemptions, has been much in the news lately. I filed a number of appeals that were ignored and to those appeals I had the proofs I refer to above attached.

Although it was not in the disclosed FBIHQ JFK assassination records that the FBI claimed were all-inclusive, I obtained from the Dallas office a record that I happen to have at hand for a different reason. The others I refer to are now inaccessible to me because for medical reasons and limitations I cannot search for them.

Serial 89-43-103 ^{is} was a memo from SA Wallace Reitman to his Dallas SAC that was

not sent to FBIHQ. It is dated the day of the assassination and was annotated by Heitman early the next morning. What was not redacted under of all things a claim to privacy states that Dallas had been informed by the Mexico City (I add this) legal attache that "SA EADDER RUDD (later a Congressman I also add) is proceeding to Dallas" when Heitman met him at Love Field and took him to the field office.

Other of those Dallas records, and at least one disclosed in the form of a letter to the Director of the Secret Service of the day after the assassination, state that Rudd had with him at least one tape and at least one picture provided to the Legat by the CIA's Mexico City station said to be of Oswald.

After listening to that tape Dallas^a cabled or teletyped HQ with a paraphrase of what it heard on that tape. In response FBIHQ asked for a transcription of it and pursuant to those instructions Dallas sent a transcription by the same means.

The paraphrase and the transcription were withheld from me under an obviously spurious claim to "national security" when the only thing for which such a claim might be made was waived by the ^{official} public acknowledgement of the taping.

Not only was I and through me the people entitled to know that was intercepted and taped, the claim to withhold it was invalid and improper. That information has not, to the best of my knowledge, ever been disposed.

Are you now telling me that because the FBI behaved improperly in the federal courts that I, at 81 and in impaired health, am ~~not~~ required to go to the bottom of the list that can be used only after you transfer whatever you will transfer or have transferred to NARA and then it gets its act in order, however long that may be?

My request included all tapes and I even told the FBI where its ^{Dallas} Dallas office had them stored, not in the files but in a special cabinet.

No claim to withhold that and the other tapes was made. Their existence was just denied, and that under oath. (I was offered the FBI's tapes on Marina Oswald but knowing what it disclosed ^{to use the} improperly to me about their content I declined to accept them and for the FBI to be able to use that as a means of giving them to others who might enjoy how the FBI violated her privacy.)

What has been in the news in recent months is the obviously untruthful claim that all such tapes were routinely destroyed in about a week. That once existed two months later and the FBI Dallas office had it. I do not believe that Dallas would have destroyed it or ^{would} not have made and kept a dub. It had been ordered by the President to make an all-inclusive investigation and that required it to preserve that tape. If there then was only one.

But in all the controversy over whether or not all those tapes were destroyed I have neither seen nor heard a word about this attributed to the FBI. And that after the new Act was effective,

A different tape is also involved by being withheld from me in C.A. 78-0322 in which it was requested and about which the FBI swore falsely with steadfastness. That is the recording of the Dallas police at the time of the assassination. To illustrate the determination to withhold by false swearing, first the FBI denied that it had even had a tape of those broadcasts. When I told the court that it had in fact transcribed the broadcasts for the Warren Commission, which published the FBI's transcription, which I then notified the court, citing the FBI's own records, was made in Dallas, I still did not get them. When I told the court and the FBI the name of the agent who went to the police broadcast room and made them and even identified, as I did from the FBI's own records, the make of the office tape recorder he took there for that purpose, the FBI's response was that he had done that for personal reasons only.

As the FBI's persistence in improper withhold continued, with an imaginative assortment of invalid attestations, I finally told it and the appeals office where the originals were at FBIHQ. Their existence there was denied.

And a year later the office of appeals attorney Phyllis Hubbell wrote me in great excitement. They had been found by "accident" where I had stated they were.

The last I heard from the FBI about that is that it was sent to the Archives, and that was some time later. My request of the Archives for it has not been met after at least more than a decade.

This is, I believe, a fair reflection of those appeals I filed having been asked to do that by the Department's appeals office. My copies fill three file drawers. And aside from making a record for our history because they were thoroughly documented with the FBI's own relevant records, it was a waste of my time.

The FBI was determined to withhold and it withheld what was relevant and the relev relevance and existence of which I proved.

When it amended FOIA's investigatory files exemption in 1974 the Congress cited my first suit for the results of the FBI's scientific testing in the JFK assassination as requiring that amending. I refiled that suit as the first under the amended Act. It is C.A. 75-226. The agent involved then retired and when I sought to depose them the FBI objected on the ground that they had retired! The agent who replaced them in that

and in other litigation was John W. Kilty. There is not much more relevant in FOIA than whether a record sought exists and is searched for. On this Kilty swore in contradiction to himself! When I referred to that as perjury the FBI's response was that I could make such charges ad infinitum because I know more about that assassination and its investigation than anyone then working for the FBI. And got away with it.

Let me give you an example of what was and remains withheld after I proved its existence in one of those depositions the FBI sought to prevent.

The pictures of much of the President's clothing, prime evidence, that the FBI gave

the Commission were, in the words of the Archives photographer who was about to retire and thus considered himself safe from retaliation, of the most professional incompetence. They obscured even the pattern of the President's shirt to the point where ~~the~~ three parallel stripes in it appeared to be a single stripe. The FBI had for its own purposes the kind of competent pictures it can and does make. But those it did not give the Commission and thus it withheld information important in addressing and solving the crime from the Commission.

But in its exhibit 60 to the report the President ordered of it it included a very clear picture of the short collar. When I requested it of the ~~Deputy~~ Deputy, then required by the regulations, he asked the FBI to let him see them. Once he examined them he was so moved he sent me those FBI original pictures, not copies. That was Richard Kleindienst.

The shirt collar picture shows that, contrary to the official explanation of the crime, no bullet passed through ^{it or} the knot of the tie. As the ignored Warren Commission testimony established, the damage to the knot of the tie was by a scalpel in the hands of a nurse. I confirmed this with the doctor under whose directions they did that.

I want that I not be misunderstood on this. The FBI's own picture proved that the official solution to the assassination, particularly that magical single-bullet theory, is both untrue and impossible. That picture the FBI did not give the Commission.

When I deposed then-retired SA Robert Frazier, who gave most of the FBI's testimony to the Commission, not first-hand with regard to the testing in most instances when those who could give first-hand testimony were readily available, we showed him that ~~picture~~ ^{picture} picture in questioning designed to show the existence of records not provided.

Frazier testified that that picture raised questions in his mind and that he had asked for an interpretation of it ^{what shows} by a Lab hair-and-fibers expert, I believe he said Paul Stombaugh, but it might have been another Lab agent. Only that hair-and-fibers report was not provided. We ^{raised} raised this when we later deposed SA Kalty. We were then promised that would be provided. What I was given is an entirely different and very short memo by Frazier, not the agent who made the test, to which there is no reference in the irrelevancy I was given.

Now if you think this is not relevant and if you think that the new Act removes all obligation for you to comply with FOIA in response to my requests, having frustrated compliance with what amounts to nonstop perjury, and that I must ~~not~~ ^{now} start all over with HARA, I suggest that you give a print of that picture, as I can, to the chairman of the House oversight committee, and of the phony report ^{question} given me in substitution for the actual actual scientific testing that without ~~question~~ ^{question} proved the solution to the assassination was known to the FBI to be false, and ask his opinion.

I had my experiences with the Archives once the nature of my writing was known to it. Under the then applicable regulations it was required to take pictures for those studying the assassination and give them at the prevailing rates copies of those pictures in substitution for their examination of the clothing. When the Archives did not do that, I filed under FOIA, broke, in debt and without counsel. The Archives then changed its own regulations and gave the court the replacement for the one in effect at the time of my request. And on that basis denied me copies of the pictures I requested. However, ^{the} judge directed it to take and show me the pictures I required. When some time passed and I had nothing I wrote the judge, with a copy to the archivists. He then invited me in. And the first thing I got was an apology- they could not take a picture of the knot of the tie for me because when they received it from the FBI the knot was untied! And the knot is the ^{one} place ^{where} the evidence is on the tie-it does not have the required bullet-hole through it. By manipulating it the FBI posed a picture presenting the nick made by the scalpel as the bullet hole.

I had hoped that at long last, so many years having passed, that the FBI had finally decided to live within the law. Your letter makes clear that it has not and will not. All you are giving the Archives is what you have already been compelled by the courts to make public! And what you withheld ⁱⁿ improperly from them, only ^{scantily} indicated above, you tell me to start all over again?

There is no telling the number of relevant files the FBI has kept secret and from your own letter will continue to keep secret. Let me indicate a few.

The FBI disclosed only its "Liaison With the President's Commission" file. It not only obviously has other Warren Commission files, I identified at least one of them by its number and it remained withheld. The two field office records ^{we} have provided as all their Warren Commission ^{are those} files that were opened when that Report was issued.

The FBI has files on the "Dossiers" it prepared on the ^{of} members of the Commission as soon as they were appointed. It prepared dossiers, its word, on the staff twice, once on appointment and then after the report was out. It prepared what it referred to as "sex" dossiers on the critics. Yes, I have the FBI's record from which I quote.

Now as I read this new law, it requires you to by ^{to} now have transferred to the Archives copies of all relevant records. Your letter assures me that you have not and will ~~not~~ not. Law or no law, which has always been the FBI's position.

The only apparent reason is to deter or prevent what surely will be embarrassing to the FBI.

About the President's assassination and its investigations and the right of the people to know? What the hell, he's dead anyway isn't ^{he} Nothing will bring him back, will it?

With sincere regrets,

Harold Weisberg
Harold Weisberg